

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Halifax Christian Community Church, Inc.
Licensee of WFBO-LP
Flagler Beach, Florida

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File Number EB-04-TP-054
NAL/Acct. No. 200532700003
FRN: 0006871339

FORFEITURE ORDER

Adopted: February 7, 2005

Released: February 9, 2005

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Halifax Christian Community Church, Inc., (“Halifax”) licensee of low power FM (“LPFM”) radio station WFBO-LP, Flagler Beach, Florida, for willful and repeated violation of Sections 11.35, 73.840, 73.845, and 73.1660(a)(2) of the Commission's Rules (“Rules”).¹ The noted violations involve Halifax’s failure to install and maintain operational Emergency Alert System (“EAS”) equipment and its overpower operation with a non-certified transmitter from an unauthorized location.

II. BACKGROUND

2. In response to a complaint, agents of the Enforcement Bureau’s Tampa Office (“Tampa Office”) investigated station WFBO-LP in Flagler Beach, Florida. On February 20, 2004, before inspecting the main studio, the agents observed the station’s transmitter operating at 450 watts, a level significantly above the station’s authorized power of 27 watts. The transmitter consisted of a non-certified exciter attached to a non-certified 500-watt amplifier and was located approximately 1½ miles from its licensed geographic coordinates. During the inspection of the main studio, the agents observed that the station had EAS equipment but had not installed any of it. The station owner was unable to product any EAS logs and stated that the station had never installed any EAS equipment and that he planned to install the equipment that weekend. The station owner also acknowledged that the transmitter was not located at its licensed coordinates, had always been located in its current location, and had been operating overpower to increase its coverage. The agents returned to the transmitter site with the station owner, who lowered the transmitter’s power level before the agents reached the power meter. During this inspection, the agents observed the transmitter operating at 320 watts.

3. On December 6, 2004, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Halifax in the amount of twenty-one thousand dollars (\$21,000) for the apparent willful and

¹47 C.F.R. §§ 11.35(a), 73.840, 73.845, 73.1660(a)(2).

repeated violation of Sections 11.35, 73.840, 73.845, and 73.1660(a)(2) of the Rules.² Halifax filed a response to the *NAL* requesting partial cancellation or reduction of the proposed forfeiture on January 7, 2005.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Commission's Rules ("Rules"),⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Halifax's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

5. Section 11.35(a) of the Rules states that broadcast stations are responsible for ensuring that required EAS equipment is installed so that the monitoring and transmitting functions are available during the times the station is in operation.⁶ If the EAS encoder or decoder becomes defective, a licensee may operate without the defective EAS equipment for 60 days, pending the equipment's repair.⁷ A licensee must log the date and time the equipment was removed and restored to service.⁸ If the repair or replacement of defective EAS equipment cannot be completed within 60 days, the licensee must submit an informal request to the District Director of the FCC field office serving the area for additional time to repair the defective equipment.⁹ In addition, Section 73.3549 of the Rules allows licensees to request from the Audio Division of the Media Bureau an extension of authority to operate without the required EAS equipment, beyond the time granted by the District Director.¹⁰

6. In its response to the *NAL*, Halifax claims that it installed its EAS equipment on October 21, 2003, but that its EAS decoder never communicated properly with the printer. Because manually logging messages became too burdensome, Halifax asserts it removed its EAS decoder for repair on an unspecified date. It claims to have received the repaired equipment on February 16, 2004. Because it claims to have requested an extension of authority to operate without an EAS decoder from the Media Bureau in a letter dated December 22, 2003, Halifax asserts it was in compliance with the Rules even though its EAS unit was not installed or operational during the agents' inspection and requests cancellation of the proposed EAS forfeiture.

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532700003 (Enf. Bur., Tampa Office, December 6, 2004) ("*NAL*").

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

⁶47 C.F.R. § 11.35(a).

⁷47 C.F.R. § 11.35(b).

⁸*Id.*

⁹47 C.F.R. § 11.35(c).

¹⁰47 C.F.R. § 73.3549.

7. Although Halifax asserts it had previously installed operational EAS equipment at the station, Halifax failed to produce any EAS logs, which would document when the equipment was installed, when tests were conducted, when the EAS equipment was removed for repair, and when the equipment was returned after repair, or other evidence to corroborate its response to the *NAL*. Given that Halifax failed to provide corroboration of its response to the *NAL* and failed to disclose to the agents the assertions contained in its *NAL* on February 20, 2004, we must rely on the evidence that the agents obtained during its inspection. On February 20, 2004, although EAS equipment was present at the station, none of it was installed or operational. On that day, there was no evidence at the station that any EAS equipment had ever been installed. Finally, in response to questions regarding its EAS equipment, the station owner contemporaneously stated that he had not installed EAS equipment before and planned on installing the equipment that weekend. Thus, based on the evidence, we find that Halifax willfully¹¹ and repeatedly¹² violated Section 11.35 by failing to install and maintain operational EAS equipment. We also note that Halifax's assertion that it was in compliance with the Rules, because it submitted a request for an extension of authority to operate without an EAS decoder is incorrect. Even if Halifax filed the extension request, it did not submit an initial request with the District Director of the Tampa Office, as required by Section 11.35(c), and did not receive approval from any Commission representative to operate without EAS equipment for more than 60 days.¹³

8. Section 73.840 of the Rules requires the station to maintain the transmitter power output ("TPO") as near as practicable to its authorized value, but not less than 90% of the minimum TPO, nor greater than 105% of the maximum authorized TPO.¹⁴ Halifax does not deny that it operated Station WFBO-LP's transmitter at over 1000% of its authorized power on more than one day. Thus, based on the evidence, we find that Halifax willfully and repeatedly violated Section 73.840 of the Rules by operating its station at significantly greater power than its authorization allows. We are particularly troubled that Halifax operated its station at such a high level for a prolonged period of time to increase its coverage and attempted to cover up the extent of its violation during the inspection.

9. Section 73.845 of the Rules requires each LPFM station to maintain and operate its station in accordance with the terms of its station authorization.¹⁵ Station WFBO-LP's station authorization specified its authorized transmitter location by geographic coordinates. Halifax does not deny that its transmitter was located approximately 1-1/2 miles away from its authorized location on more

¹¹Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹²As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹³Halifax did not provide any evidence of mailing or receipt of the extension request, such as a confirmation or tracking number or signed return receipt. The Audio Division of the Media Bureau has no record of Halifax's extension request.

¹⁴47 C.F.R. § 73.840.

¹⁵47 C.F.R. § 73.845.

than one day. Thus, based on the evidence, we find that Halifax willfully and repeatedly violated Section 73.845 of the Rules by operating its station at an unauthorized location.

10. Section 73.1660(a)(2) of the Rules requires every LPFM station to use a certified transmitter.¹⁶ In its response to the *NAL*, Halifax claims that its amplifier was certified, because it had an FCC Identifier.¹⁷ Halifax admits, however, that, prior to March 17, 2004, it used a non-certified LPFM exciter in violation of the Rules. Halifax claims it was forced to purchase a non-certified transmitter to comply with the deadline in its construction permit, as no certified transmitters were available on the market at that time, and could not afford to purchase an additional certified transmitter when they became commercially available. Halifax, therefore, asks not to be held accountable for this violation, as it obtained a certified transmitter on March 17, 2004. We disagree. Even if there were no certified LPFM transmitters available for sale before its construction permit expired, Halifax could have requested from the Commission a waiver of Section 73.1660(a)(2) of the Rules or an extension of its construction permit. Halifax, however, did not contact the Commission to request a waiver or extension and instead chose to ignore Section 73.1660 altogether. Moreover, Halifax's remedial actions to replace its transmitter after the agents' inspection are expected and do not warrant a cancellation or reduction in the forfeiture amount.¹⁸ Therefore, based on the evidence, we find that Halifax willfully and repeatedly violated Section 73.1660(a)(2) of the Rules by operating its station with a non-certified transmitter.

11. Halifax asserts that the forfeiture should be reduced because there have been no prior offenses committed by it and because its President has a "long-time" record of compliance with the Rules. Halifax does appear to have a past, albeit short, history of compliance. However, after considering Halifax's blatant disregard for the Commission's power limits, we conclude that a reduction of the forfeiture amount based on a history of compliance with the Rules is inappropriate.¹⁹

12. Halifax also requests a reduction of the forfeiture based on its inability to pay. We have reviewed the financial information provided by Halifax and find that a reduction of the forfeiture to \$10,000 on the basis of inability to pay is appropriate.²⁰ In so reducing the proposed forfeiture, however,

¹⁶ 47 C.F.R. § 73.1660(a)(2)

¹⁷ Halifax's LPFM transmitter consisted of an exciter and an amplifier. Although Halifax correctly notes that its amplifier did have an FCC Identifier, according to the Commission's equipment authorization database, the manufacturer requested authorization for the amplifier under the notification process. Thus, contrary to Halifax's assertions, the amplifier was not certified, as required by the LPFM Rules. See 47 C.F.R. § 73.1660.

¹⁸ See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524, para. 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03, para. 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117, para. 13 (Enf. Bur. 2002).

¹⁹ See *All American Telephone, Inc.*, 16 FCC Rcd 16601 (2001).

²⁰ The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues). In this case, the reduced forfeiture represents a smaller percentage than those issued in the *Local Long Distance, Inc.* and *Hoosier Broadcasting Corp.*, cases, and a higher percentage compared to the forfeiture issued in *PJB Communications of Virginia, Inc.*

we caution Halifax that further violations may result in additional enforcement measures, including revocation of its license.

13. We have examined Halifax's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Halifax willfully and repeatedly violated Sections 11.35, 73.840, 73.845, and 73.1660(a)(2) of the Rules. Although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$10,000 is appropriate based on Halifax's demonstrated inability to pay.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,²¹ Halifax Christian Community Church, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Sections 11.35, 73.840, 73.845, and 73.1660(a)(2) of the Rules by failing to install and maintain operational Emergency Alert System equipment and operating overpower with a non-certified transmitter from an unauthorized location.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²² Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment should note NAL/Acct. No. 200532700003, and FRN 0006871339. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.²³

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Ronald L. Kocher, President, 45 Pine Hill Lane, Palm Coast, Florida 32164.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

²¹47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²²47 U.S.C. § 504(a).

²³See 47 C.F.R. § 1.1914.